

1 ERSKINE & TULLEY
A PROFESSIONAL CORPORATION
2 MICHAEL J. CARROLL (ST. BAR #50246)
220 Montgomery Street, Suite 303
3 San Francisco, CA 94104
Telephone: (415) 392-5431
4 Facsimile: (415) 392-1978

5 Attorneys for Plaintiffs
6
7
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12	BOARD OF TRUSTEES OF THE SHEET METAL WORKERS)	NO. <u>C 07 5441 SI</u>
	HEALTH CARE PLAN OF NORTHERN CALIFORNIA,)
13	SHEET METAL WORKERS PENSION TRUST OF)
	NORTHERN CALIFORNIA, SHEET METAL WORKERS) (PROPOSED)
14	LOCAL 162 VACATION, HOLIDAY SAVINGS PLAN;) <u>SECOND AMENDED</u>
	DENNIS CANEVARI, TRUSTEE,) <u>COMPLAINT</u>
15)
	Plaintiffs,)
16)
	vs.)
17)
	DAVID BARTLEY AND JASON MILLS, individually)
18	and doing business as BART MILL MECHANICAL;)
	BART MILL MECHANICAL, a partnership)
19)
	Defendant.)
20)

21 Plaintiffs complain of defendant and for a cause of action
22 alleges that:

23 1. Jurisdiction of this Court is founded upon Section 301
24 (c) (1) of the National Labor Relations Act of 1947 [29 U.S.C. §185(a)]
25 and Section 502 of the Employee Retirement Income Security Act of
26 1974, said Act being hereinafter referred to as "ERISA" (29 U.S.C.
27 §1132), in that defendant has violated a collective bargaining
28 agreement and certain Trust Agreements, thereby violating the

(PROPOSED) SECOND AMENDED COMPLAINT

1 provisions of ERISA and the provisions of the National Labor Relations
2 Act of 1947. This action is also brought pursuant to the Federal
3 Declaratory Judgment Act (28 U.S.C. §2201 et seq.) in a case of actual
4 controversy between plaintiffs and defendants, and for a Judgment that
5 defendant pay fringe benefit contributions in accordance with its
6 contractual obligations.

7 2. Plaintiffs Boards of Trustees of the Trust Funds named
8 in the caption (hereinafter "Trust Funds") are trustees of employee
9 benefit plans within the meaning of §§3(1) and (3) and §502(d)(1) of
10 ERISA, 29 U.S.C. §1002(1) and (3) and §1132(d)(1), and a multiemployer
11 plan within the meaning of §§3(37) and 515 of ERISA, 29 U.S.C.
12 §§1002(37) and §1145. Plaintiff Dennis Canevari is a trustee. Said
13 Trust Funds are authorized to maintain suit as independent legal
14 entities under §502(d)(1) of ERISA, 29 U.S.C. §1132(d)(1).

15 3. Plaintiffs are informed and believes and thereupon
16 alleges that defendants reside and do business in Shingle Springs,
17 California. Performance of the obligations set forth therein is in
18 this judicial district.

19 4. Each and every defendant herein is the agent of each
20 and every other defendant herein. Defendants and each of them are
21 engaged in commerce or in an industry affecting commerce.

22 5. At all times pertinent hereto, defendants were bound
23 by a written collective bargaining agreement with Sheet Metal Workers
24 Local Union No. 162, a labor organization in an industry affecting
25 commerce. The aforesaid agreement provide that defendants shall make
26 contributions to the TRUST FUNDS, on behalf of defendants' employees
27 on a regular basis on all hours worked, and that defendants shall be
28 bound to and abide by all the provisions of the respective Trust

1 Agreements and Declarations of Trust of said TRUST FUNDS (hereinafter
2 the "Trust Agreements").

3 6. The Trust Funds rely upon a self reporting system.
4 Defendants have unique knowledge of the amounts of contributions that
5 it is liable to pay each month, and has a fiduciary obligation to
6 accurately report the amount to the Trust Funds.

7 7. Defendants have breached both the provisions of the
8 collective bargaining agreement and the Trust Agreements above
9 referred to by failing to complete and send in monthly reports and/or
10 to pay all moneys due thereunder on behalf of defendants' employees
11 to the TRUST FUNDS. Said breach constitutes a violation of ERISA (29
12 U.S.C. 1002, et seq.) and of the National Labor Relations Act of 1947.

13 8. Defendants have failed and refused to pay its March
14 2007 contribution in a timely manner. Defendant has not properly paid
15 August or September 2007 contributions to the TRUST FUNDS. Liquidated
16 damages and interest are now due and owing. The total amount due is
17 unknown; additional monthly amounts will become due during the course
18 of this litigation and in the interest of judicial economy, recovery
19 of said sums will be sought in this case.

20 9. Demand has been made upon said defendants, but
21 defendants have failed and refused to pay the amounts due the TRUST
22 FUNDS or any part thereof; and there is still due, owing and unpaid
23 from defendant the amounts set forth in Paragraph 8 above.

24 10. An actual controversy exists between plaintiffs and
25 defendants in that plaintiffs contend that plaintiffs are entitled to
26 a timely monthly payment of trust fund contributions now and in the
27 future pursuant to the collective bargaining agreement and the Trust
28 Agreements, and defendants refuse to make such payments in a timely

1 manner.

2 11. The Trust Funds do not at this time seek to audit the
3 books and records of defendants. The only issue raised in this
4 complaint is defendants' failure to complete and file voluntary
5 monthly reports and pay the contributions due. The Trust Funds seek
6 to obtain a judgment for any outstanding delinquent contributions
7 based on defendants' reports and to reserve the right to audit
8 defendant for this or any other unaudited period.

9 12. The Trust Agreements provide that, in the event suit
10 is instituted to enforce payments due thereunder, the defendant shall
11 pay court costs and reasonable attorneys' fee. It has been necessary
12 for plaintiff to employ ERSKINE & TULLEY, A PROFESSIONAL CORPORATION,
13 as attorneys to prosecute the within action, and reasonable
14 attorneys' fee should be allowed by the Court on account of the
15 employment by plaintiff of said attorneys.

16 WHEREFORE, plaintiffs pray:

17 1. That the Court render a judgment on behalf of plaintiffs
18 for all contributions due and owing to the date of judgment based upon
19 unaudited reporting forms, plus liquidated damages provided for by the
20 contract, interest at the legal rate, reasonable attorneys' fees
21 incurred in prosecuting this action and costs.

22 2. That the Court enjoin the defendants from violating the
23 terms of the collective bargaining agreements and the Trust Agreements
24 for the full period for which defendant is contractually bound to file
25 reports and pay contributions to the TRUST FUNDS.

26 3. That the Court reserve plaintiffs' contractual right to
27 audit defendants for months prior to judgment, and in the event of
28 such audit, collect any additional sums which may be due.

1 4. That the Court retain jurisdiction of this cause pending
2 compliance with its orders.

3 5. For such other and further relief as the Court deems
4 just and proper.

5 DATED: June 10, 2008

ERSKINE & TULLEY
A PROFESSIONAL CORPORATION

6
7
8 By: /s/Michael J. Carroll
Michael J. Carroll
9 Attorneys for Plaintiffs
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28